

CAN COMMENTS EXHIBIT 1

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

PUBLIC UTILITIES COMMISSION)

RE: Investigation Concerning Central)

Maine Power Company's Potential Sale)

of its Interest in Vermont Yankee)

Nuclear Power Corporation to Entergy)

Nuclear Vermont Yankee, LLC)

))

Docket No.)

PETITION TO INITIATE PROCEEDINGS

July 25, 2002

The Public Advocate, pursuant to 35-A M.R.S.A. § 1702 (3) and pursuant to § 1201 of the Rules of Practice and Procedure (Chapter 110) of the Maine Public Utilities Commission, petitions to initiate proceedings concerning Central Maine Power Company's potential sale of its interest in Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC and the effect the sale may have on Maine ratepayers' right to return of excess decommissioning funds.

The grounds for this Petition are:

1. Central Maine Power Company ("CMP") holds a four percent interest in Vermont Yankee Nuclear Power Corporation ("VYNPC").
2. The amounts Maine ratepayers contribute to VYNPC through CMP are included in stranded cost and recovered in rates pursuant to the Commission's January 19, 2000 Order in Docket No. 1997-580, Public Utilities Commission, *Investigation of Central Maine Power Company's Revenue Requirements and Rate Design (Phase II)*.
3. Through its Orders¹ dated June 13, 2002 (Order), July 11, 2002 (Order Re Motions to Alter Or Amend, and to Unseal Exhibit) and July 15, 2002 (Order of Clarification), in Docket No. 6545, *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power*

¹ Please find the July 11, 2002 and July 15, 2002 Orders as attachments to this Petition.

Corporation re: proposed sale of Vermont Yankee Nuclear Power Station and related transactions, the Public Service Board of the State of Vermont ordered that Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy"), purchaser of VYNPC, must return all excess decommissioning funds to ratepayers² as a condition of approval of the purchase, notwithstanding the fact that the memorandum of understanding describing the terms of the sale would allow Entergy to retain 50% of any excess decommissioning funds.

4. Finding the Vermont Public Service Board's condition requiring return of all excess decommissioning funds to be unacceptable, Entergy informed³ the Vermont Public Service Board on July 19, 2002 that Entergy and Vermont Yankee were negotiating a resolution to Entergy's dissatisfaction. On July 22, 2002, Entergy submitted its proposed resolution, which would provide for full Vermont ratepayer return of excess decommissioning funds, but would require that out of state sponsors, including Central Maine Power Company, relinquish all rights to their ratepayers' share of excess decommissioning funds in exchange for a one time payment of a prorated share of \$1.5 million to be funded by the Vermont utilities.

5. The Maine Public Utilities Commission ("MPUC") may assume jurisdiction in the matter of CMP's execution of the proposed resolution on the following bases:

- a. CMP's abandonment of its ratepayers' share of excess decommissioning funds would violate the utility's duty to mitigate stranded costs imposed by Maine law, 35-A M.R.S.A. § 3208 (4); and

² The Vermont Public Service Board cited federal regulations requiring the same result: 18 C.F.R. § 35.32 (a) (7), attached for reference.

³ Vermont Yankee Nuclear Power Corporation's July 22, 2002 letter to the Vermont Public Service Board and Assignment of Rights to Excess Decommissioning Funds are attached.

b. No federal preemption is at issue because the applicable federal regulation⁴ requires return of all excess decommissioning funds to ratepayers, and consequently, state and federal goals are in alignment.

6. Time is of the essence in that the Purchase and Sale Agreement by and among Vermont Yankee, Entergy Nuclear Vermont Yankee, LLC and Entergy Corporation, as guarantor, will terminate if closing has not occurred by July 31, 2002 and Entergy is expected to seek expedited resolution prior to that date.

Relying upon the information provided above, and believing that irreparable harm may be visited upon Maine's ratepayers but for prompt Commission action, the Public Advocate hereby requests that the Commission initiate proceedings to review, investigate and take appropriate action, pursuant to 35-A M.R.S.A. § 1702 (3), with respect to the proposed Assignment of Rights to Excess Decommissioning Funds. Further, the Public Advocate requests that the Commission immediately Order CMP to refrain from executing any proposed Assignment of Rights to Excess Decommissioning Funds pending Commission investigation of the issues presented.

Respectfully submitted,

Stephen G. Ward
Public Advocate

⁴ 18 CFR § 35.32 (a) (7) reads as follows: "If the Fund balances exceed the amount actually expended for decommissioning after decommissioning has been completed, the utility shall return the excess jurisdictional amount to ratepayers, in a manner the Commission determines." (Please find attached.) See also, *Maine Yankee v. Maine Public Utilities Commission*, 581 A.2d 799, 803 (Me. 1990), "Preemption occurs whenever state law conflicts with federal law in such a way that it becomes impossible to comply with both simultaneously."